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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,837	07/22/2005	Manfred Piontek	2619-0038WOUS	8927

35301 7590 09/17/2008  
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EXAMINER
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PATEL, TARLA R

ART UNIT	PAPER NUMBER
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3772

MAIL DATE	DELIVERY MODE
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09/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,837	<b>Applicant(s)</b> PIONTEK, MANFRED	
	<b>Examiner</b> TARLA R. PATEL	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/26/08 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7 recites the limitation "each partial shell" and "partial shell" in claim is not clear and is not supported by the claim 1 from which it depends from. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim 8 recites limitation that the "fastening a belt" is indefinite is not clear to the examiner.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

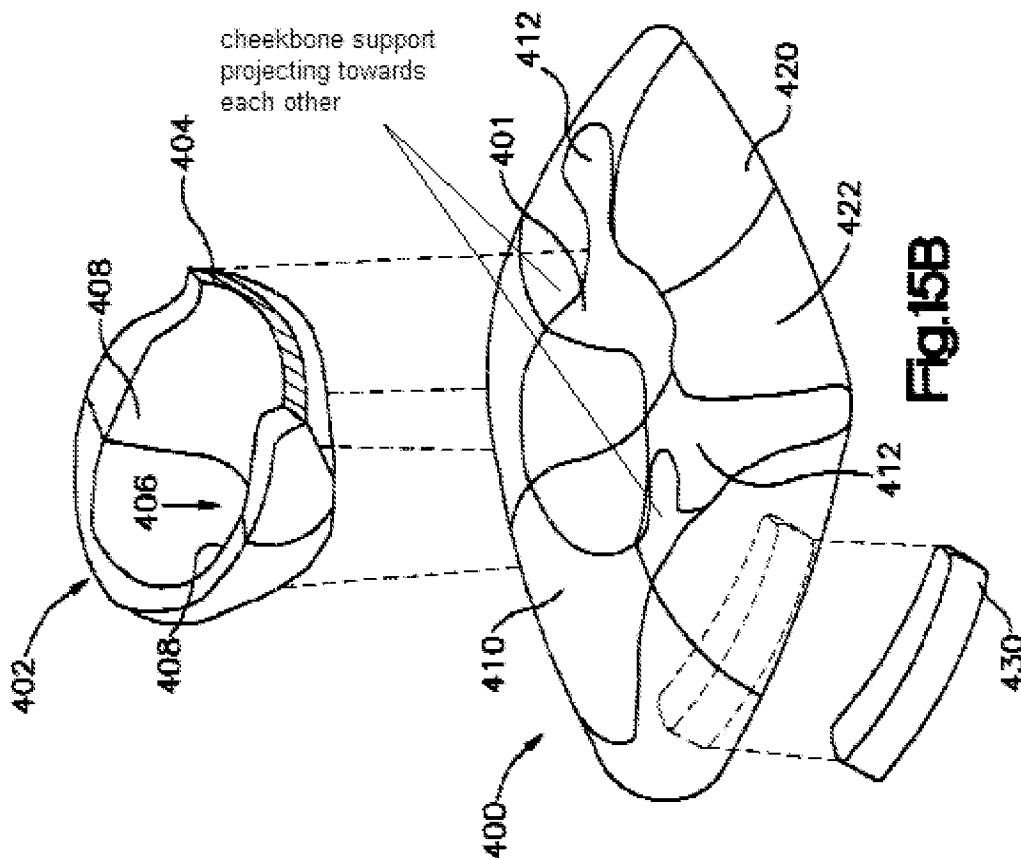
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Papay et al. (6,460,207).

Papay et al. disclose a headrest (400) for a patient-bearing surface with rigid-support shell (402, column 6 lines 34-60 it is taught to be having higher density or stiffness than the pillow is interpreted as being rigid support) the support shell having an approximately horseshoe shaped form (as broadly interpreted the term horseshoe as having u-shaped structure figures 15A and 15B shown to have approximately horseshoe shape) and a support cushion (410) releasably connectable (please see figure 15B and column 6 lines 65-67) with the support shell, wherein support shell include a central section (406 see fig 15B) for supporting the rear or forehead of a head of a patient, the limitation that "supporting the rear or forehead of a head of a patient is functional recitation that has not been given any patentable weight. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim in sufficient structure to warrant the presence of the functional language. *In re fuller*, 1929 C.D. 172; 388 C.D. 279., further the head rest of Papay et al. is capable of performing the function of supporting the forehead of a head of a patient since, it is known to be headrest (column 1 lines 58-65), and having has a support surface (406) of approximately spherical shell shape (see figure 15B),

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and with two side sections spaced from one another (two side of 410 is interpreted as two side of applicant's claimed limitation), the side sections each having a support surface approximately a common cylindrical shape (see figure 15B) whose axis runs parallel to a line of symmetry of the support shell (the examiner interprets the straight line across the support from the top to bottom as line of symmetry) a cheekbone (please see figure below as is pointed is interpreted as cheek bone support) on each of the side sections which cheekbone support projects in the direction toward the other side section (see figure 15B).



With respect to claim 3, the support shell is made of plastic (column 4 lines 34-49, as disclosed that the cradle can be made of plastic in other embodiment, it is inherent that it can be made for the 402 as well).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-8 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Papay et al. in view of Mazzei et al. (6,490,737).

Papay et al. substantially discloses the invention, see rejection to claims 1, 3 and 9 above; however, Papay et al. '333 does not disclose that the support cushion on its side facing the support shell carries at least two stick pins designed for insertion into through going bores in the support shell, the headrest or each partial rest is connected to fastening block for holding it to a profiled rail, the headrest on the outer edge of each side section is formed an eye for the fastening of a belt for fixing the head of a patient to the headrest and further, does not discloses stick pins each have a cylindrical shaft with cylindrical shaft has an elastically resilient band with an external diameter slightly larger than the diameter of bores and headrest is divided into two mirror image similar partial supports along its line of symmetry..

However, Mazzei et al. '737 does teach a device for protecting a patient's head wherein the device the support cushion on its side facing the support shell carries at least two

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stick pins (73) designed for insertion into through going bores (60) in the support shell, the headrest or each partial rest (see fig 7) is connected to fastening block (62) for holding it to a profiled rail (66), the headrest on the outer edge of each side section is formed an eye (space 27 and 37, see figure 7) for the fastening of a belt (24) for fixing the head of a patient to the headrest and each pin having a cylindrical shaft with cylindrical shaft (61, see fig 7) and each has an elastically resilient band with an external diameter slightly larger than the diameter of bores (see fig 7) and device is divided into two mirror image similar partial supports along its line of symmetry (see fig 7, column 12 lines 27-30). At the time of the invention was made, it would have been obvious to one having ordinary skill in to use two stick pins each have a cylindrical shaft with an elastically resilient band with an external diameter slightly larger than the diameter of bores and designed for insertion into through going bores in the support shell, the headrest or each partial rest is divided into two mirror image similar partial supports along its line of symmetry that is connected to fastening block for holding it to a profiled rail, the headrest on the outer edge of each side section is formed an eye for the fastening of a belt for fixing the head of a patient to the headrest to device of Papay et al. '333, as taught by Mazzei et al. '737 to provide breathing opening for user and support the rest to better secure patient for surgery and when user laying face down and accommodating the various face size user for the headrest.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1 and 3-8 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP  
/Tarla R Patel/  
Examiner, Art Unit 3772

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772